85-297

No.

Supreme Court, U.S.
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In the Supreme Court of the United States

October Term, 1985

ANTHONY G. BIEKER,
Petitioner,

vs.

STATE OF KANSAS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE KANSAS SUPREME COURT AND THE KANSAS COURT OF APPEALS

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QUESTION PRESENTED

Did the search warrant affidavit presented to the Magistrate in this case provide a substantial basis to determine that probable cause existed for a search of the Petitioner's home, or was the warrant's issuance tantamount to an abandonment of judicial discretion requiring both suppression and exclusion?

TABLE OF CONTENTS

QUESTION PRESENTED I
OPINION BELOW 1
JURISDICTION 2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2
STATEMENT OF THE CASE 3
REASONS FOR GRANTING THE WRIT—

The Search Warrant Affidavit Utilized Herein Failed to Provide a Substantial Basis to Allow the Magistrate to Determine Probable Cause Existed for a Search of the Petitioner's Home and Further Required the Abandonment of Judicial Discretion to Allow for Its Issuance, Requiring Both Suppression and Exclusion 8

CONCLUSION 14

APPENDIX:

A. Order of the Supreme Court of Kansas denying the Petitioner's Petition for Review A1
B. Opinion of the Kansas Court of Appeals A2
C. Search Warrant Affidavit A6

TABLE OF AUTHORITIES

Cases

Adams v. Williams, 407 U.S. 143, 32 L.Ed.2d 612, 92 S.Ct. 1921 (1972) 10
Brown v. Texas, 443 U.S. 47, 61 L.Ed.2d 357, 99 S.Ct. 2637 (1979) 11
Illinois v. Gates, ... U.S. ....., 76 L.Ed.2d 527, 103 S.Ct. 2329 (1983) 9, 10, 11, 12
Sibron v. New York, 392 U.S. 4062, 20 L.Ed.2d 917, 88 S.Ct. 1889 (1967) 11
State v. Davis, 8 Kan.App.2d 39, 649 P.2d 498 (1982) 11
State v. Finchpaugh, 232 Kan. 831, 659 P.2d 208 (1983) 12
State v. Hays, 221 Kan. 126, 557 P.2d 1275 (1976) 11
State v. Jacobs, 8 Kan.App.2d 729, 667 P.2d 397 (1983) 11
State v. Morgan, 222 Kan. 149, 563 P.2d 1056 (1977) 12
State v. Rose, 8 Kan.App.2d 659, 665 P.2d 1114 (1983) 11
United States v. Kolodziej, 712 F.2d 975 (5th Cir. 1983) 12
United States v. Leon, ... U.S. ....., 82 L.Ed.2d 677, 104 S.Ct. 3405 (1984) 13

Constitutional Provisions

U.S. Const. Amend. IV 2
U.S. Const. Amend. XIV 2

Statute

Article 65, Sec. 4127b(a)(3), K.S.A. 1984 Supp. 65-4127b(a)(3) 3, 6

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TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

The Petitioner, Anthony G. Bieker, respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the Kansas Court of Appeals, entered in this proceeding on May 9, 1985, along with the Kansas Supreme Court's denial of the Petitioner's Petition for Review of July 2, 1985.

OPINION BELOW

The Opinion of the Kansas Court of Appeals is unpublished and is appended hereto, Appendix B. The Order of the Kansas Supreme Court, denying review, without opinion, is appended hereto, Appendix A.

JURISDICTION

The Judgment of the Kansas Court of Appeals was rendered on May 9, 1985. The timely Petition for Review by the Kansas Supreme Court was denied on July 2, 1985. This Petition for Certiorari is filed within sixty (60) days of that date. This Court's jurisdiction is invoked under 28 U.S.C., Sec. 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution (U.S. Const. Amend. IV) provides:

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized."

The Fourteenth Amendment to the United States Constitution (U.S. Const. Amend. XIV) provides:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article 65, Sec. 4127b(a)(3) of the Kansas Statutes Annotated, 1984 Supp., (K.S.A. 1984 Supp. 65-4127b(a)(3)), states:

> "(a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to manufacture, possess, have under such person's control, prescribe, administer, deliver, distribute, dispense or compound:
>
> "(3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, and any amendments thereto."

STATEMENT OF THE CASE

At 3:26 p.m., on November 25, 1983, Investigator Howard S. Budreau, of the Concordia, Kansas, Police Department, applied to District Magistrate Judge Marvin L. Stortz for a search warrant permitting the search of the Petitioner's home located at 310 East Second Street, Concordia, Kansas. The affidavit asked for authority to search for marijuana, cocaine, LSD, hashish and paraphernalia. (R. Vol. I, p. 95. A copy of the affidavit is appended to this Petition, Appendix C.) The affidavit was executed by Investigator Budreau. (R. Vol. I, pp. 96-97)

The information and conclusions gleaned from the affidavit, attached hereto, being provided by either the affiant or the informant, one or both, may be capsulized as follows:

1. The affiant obtained information that illegal drug activities concerning a group of subjects, James Bieker, Eddie Boyer, Anthony Bieker and Kenneth Crump.
2. The affiant contacts an unnamed "associate" of the group which caused the "associate" to destroy his drugs and paraphernalia.

3. This was verified by the affiant talking to the "associate" and the "associate" admitting the destruction which confirmed the reliability of the informant in this matter. (The information provided by the informant at this point is nil.)

4. The informant (CI) provides information which is not reflected about "drug related information" about the "subject group."

5. A stash of illegal substance which belonged to the Petitioner and his cohorts was found in a country farmhouse, but destroyed by the finders. The Court of Appeals resolved this information on Page 3 of the Court's Opinion by finding that the information did not specify the finders, how the informants knew they found drugs, or why he believed the drugs destroyed belonged to the Petitioner and his friends.

6. The Concordia area was being supplied with drugs by the Petitioner through his brother who lives in Manhattan, Kansas, Anthony Bieker lived at 310 East Second.

7. The affiant contacted the Riley County Police and was advised that James Bieker lived at Route #5, Manhattan, Kansas; Anthony Bieker at 310 East Second.

8. Information supplied by law enforcement officers substantiated drug activity by the group with place of contact being at 310 East Second Street.

9. Out of county vehicles with Smith and Reno County plates and Missouri plates were at the Petitioner's residence, along with late night activities.

10. On November 23, 1983, the affiant saw Tom Bieker at the Thunderbird Lounge with bloodshot eyes, with rawness of the eyelids.

11. On November 24, 1983, the affiant saw vehicles normally associated with 310 East Second Street along with vehicles registered to one Robert Swanson at 310 East Second. No movement visible in dwelling and the shades and curtains drawn shut while it was daylight. Swanson had been convicted of possession of marijuana. On November 24, 1983, Swanson's vehicle was gone, but the vehicles belonging to Anthony and Tom Bieker remained.

12. The affiant received additional information from a reliable informant that Eddie Boyer was arrested for possession of a controlled substance, made to seek help for drug addiction, confirming the group's drug activities.

13. The confidential and reliable informants were the providers of information, no criminal background, and they were believed by the affiant to be law abiding citizens of good moral character.

On November 25, 1983, at 3:26 p.m., Judge Stortz issued a search warrant authorizing the search as requested in the affidavit. The warrant was executed by Investigator Budreau on November 25, 1983, at 11:35 p.m. In the course of the execution, numerous items were seized as contraband, which are listed in the search warrant return. (R. Vol. I, p. 98)

As a result of the search of the Petitioner's home, he was arrested and charged by complaint with the misdemeanor offenses of possession of marijuana, possession

of LSD, and possession of paraphernalia, as well as a felony charge of possession of cocaine. (R. Vol. I, p. 3)

On January 30, 1984, the Petitioner moved to suppress the evidence seized by Investigator Budreau on the grounds that the investigator's affidavit failed to provide probable cause to support the issuance of a search warrant. The Petitioner's motion was overruled by Judge Stortz on April 18, 1984. (R. Vol. I, pp. 13, 37)

The preliminary hearing was held on the felony charge on April 18, 1984, and the Petitioner was bound over for trial. (R. Vol. I, p. 35) On April 24, 1984, the State filed a four count information against the Petitioner. Count I charged the Petitioner with possession of LSD, a violation of K.S.A. 65-4127b(a)(3), a Class A misdemeanor. Count II charged the Petitioner with possession of marijuana in violation of K.S.A. 65-4127b(a)(3), a Class A misdemeanor. Count IV charged the Petitioner with possession of cocaine, in violation of K.S.A. 65-4127a, a Class C felony. (R. Vol. I, p. 39)

On May 4, 1984, the Petitioner filed a second Motion to Suppress, again based on the insufficiency of the search warrant affidavit to present probable cause. (R. Vol. I, p. 44) The Petitioner's motion was overruled by the Trial Court on May 18, 1984. (R. Vol. I, p. 61)

A jury trial was held on May 25, 1984. Prior to the trial, the Petitioner orally renewed all pre-trial motions, including his Motion to Suppress. The Trial Judge again overruled these motions. The Petitioner then lodged a continuing objection to the introduction of evidence which had been the subject of his suppression motions. The Petitioner's continuing objection was noted by the Court. The Petitioner was convicted by a jury of Counts I, II and III of the Information, possession of LSD, marijuana and

paraphernalia. He was acquitted by the jury of Count IV of the Information, possession of cocaine. The Trial Judge granted the Petitioner fifteen days in order to file a Motion for New Trial, again raising the sufficiency of the search warrant affidavit. The Court overruled the Petitioner's Motion for New Trial on June 26, 1984. (R. Vol. I, pp. 76-79)

On June 26, 1984, the Petitioner was sentenced to a term of confinement in Cloud County Jail of one (1) year and ordered to pay a fine in the sum of $100.00 on Count I. He was sentenced to a term of confinement in the Cloud County Jail of six (6) months and fined the sum of $75.00 on Count II, and was sentenced to a term of confinement of thirty (30) days in the Cloud County Jail and fined the sum of $50.00 on Count III. The sentences were ordered to be served consecutively and the Petitioner was ordered to pay costs. The Petitioner was granted probation from the jail sentences imposed on Counts I and II. The Petitioner was ordered to commence serving his sentence on Count III. (R. Vol. I, pp. 84, 85) However, execution of the sentence was stayed upon the Petitioner's posting of a $1,000.00 appeal bond. The Petitioner is currently free on bond. (R. Vol. I, p. 88) The Petitioner filed his Notice of Appeal with the Trial Court on June 26, 1984. (R. Vol. I, p. 86)

REASONS FOR GRANTING THE WRIT

1. The Search Warrant Affidavit Utilized Herein Failed to Provide a Substantial Basis to Allow the Magistrate to Determine Probable Cause Existed for a Search of the Petitioner's Home and Further Required the Abandonment of Judicial Discretion to Allow for Its Issuance, Requiring Both Suppression and Exclusion.

The Petitioner sought both suppression and exclusion. In all deference and respect to the Kansas Court of Appeals, in reviewing the search warrant affidavit herein, along with the Court of Appeals' findings in relation thereto, it clearly appears the Court of Appeals has attempted to utilize "TOTALITY OF CIRCUMSTANCES" to resurrect the "RUBBER STAMP", and to allow for no more than conclusory statements to serve as a substitute for probable cause, suggest illegal activity, absent police corroborative efforts, the failure to suggest evidence of a crime will be found in a particular place or location; hearsay information lacking in "basis of knowledge", veracity without so much as being suggested by the affiant, and the justification of the issuance of a search warrant on pure conclusion by an affiant, "which further leads the affiant to believe that illegal drug activity is still being sought out as it was reportedly disclosed by the 'CI' in this matter, with the current location being 310 East Second, Concordia, Kansas." The affidavit reflects a total failure on any basis, much less a substantial basis "that there is a fair probability that contraband or evidence will be found in a particular place", namely the Appellant's residence, 310 East Second Street, Concordia, Kansas, as the attached affidavit so readily reflects, contrary to both the teachings of this Court and the Kansas Supreme Court.

The Court pointed out on Page 3 of its Opinion, "The affiant appears to offer two pieces of information as direct support for the credibility of the informant. First, it appears the affiant confronted one of the suspects with an allegation of drug activity and that the informant reported that as a consequence of this confrontation, the suspect destroyed the drugs he then possessed. This report of the suspect's reaction to his talk with the affiant was subsequently confirmed by the suspect himself. The other information offered in support of the informant's reliability was the affiant's belief that the informant had no criminal background and was a law abiding citizen of good moral character." (Appendix B, pg. 4)

The affidavit negates the Court's assessment of reliability initially in that the affiant did not contact any of the SUSPECTS. The affiant contacted some unknown third party who was an "associate of the group". The unknown subject reacts by destroying his drugs and drug paraphernalia. This was confirmed by the affiant in talking with the unknown "associate". The informant or the affiant never had any contact with or information from any "SUSPECT". (Appendix C)

Is it possible to conclude that this affidavit "given all of the circumstances set forth in the affidavit before the magistrate, including veracity and basis of knowledge of persons supplying hearsay information that there is a fair probability that contraband or evidence of a crime will be found in a particular place." No longer do both the informant's reliability and basis of knowledge have to be set forth, "a deficiency in one may be compensated for in determining the overall reliability of a tip by a strong showing as to others or some other indicia of reliability." *Illinois v. Gates,* ..... U.S. ....., 76 L.Ed.2d 527, 545, 103 S.Ct. 2329 (1983).

The general thrust of the information provided by Investigator Budreau in his affidavit of November 25, 1983, can be resolved in a like fashion to the Court of Appeals' finding, as viewed herein on Pages 3, 4 of the Court's Opinion, in relation to all of the information found in the affidavit, both of the informant or the affiant, in either instance does not specify its source, the Petitioner's relationship thereto or the basis of the affiant's conclusions in relation to same. In addition, there is no factual recitation of why drugs or contraband should be located at 310 East Second, the Petitioner's residence, at the time the warrant was sought, save one limited unsupported and ambiguous conclusion by the affiant, found in Paragraph 4 of his affidavit.

If we review the affidavit to "ensure that the magistrate has not abdicated his function herein", the answer becomes affirmative in that the judicial role was nonexistent. The revelations found within the affidavit, even with the application of "totality" by any standard, past, present or future, clearly reflected the judicial role was not forthcoming herein.

"Cause to suspect and reason to believe, absent a substantial basis or an officer's statement that information was received from a credible person are nothing but mere conclusions that provide no basis for a magistrate in determining probable cause." *Gates,* Id., 76 L.Ed.2d 548, 549. Rigorous scrutiny of the citizen informant's basis of knowledge may be unnecessary. A "pat-down" on suspicion, absent corroboration or detail, will not suffice for a search warrant. *Adams v. Williams,* 407 U.S. 143, 146-147, 32 L.Ed.2d 612, 92 S.Ct. 1921 (1972); *Gates,* Id., 76 L.Ed.2d 547. The citizen informant's relief from rigorous scrutiny of his basis of knowledge, in part, comes to pass as a result of his being subjected to criminal liability for

fabricated information. *Gates,* Id., 76 L.Ed.2d 545. What information in the attached affidavit provided by the "believed to be" informants herein is capable of proving to be true or false that has any relevance to drugs being located at 310 East Second Street or that was subject to police efforts in verifying the information was in fact untrue, to subject the providers to criminal responsibility? The citizen informant's status must be without question, not "believed to be", and the information provided must pertain to criminal activity, the location for which a search warrant is then sought. *Gates,* Id., 76 L.Ed.2d 545, 548. The informant's knowledge herein in this regard is nil. Some basis of the identified citizen's knowledge of criminal activity must appear. Compare *State v. Hays,* 221 Kan. 126, 129, 557 P.2d 1275 (1976); *State v. Davis,* 8 Kan.App.2d 39, 44, 649 P.2d 498 (1982). The citizen informant did not provide so much as an acceptable conclusion that drugs or contraband were located at 310 East Second, Concordia, Kansas, the Petitioner's residence.

In the affiant's affidavit, we are not so much as blessed with a recitation of any acceptable inference of criminal activity at 310 East Second, the best we can discern is human habitation. *State v. Jacobs,* 8 Kan.App.2d 729, 731, 667 P.2d 397 (1983); *State v. Rose,* 8 Kan.App.2d 659, 663, 665 P.2d 1114 (1983). Association with or knowledge of an individual being convicted of drug violations or addictions does not engender probable cause. *Sibron v. New York,* 392 U.S. 4062, 20 L.Ed.2d 917, 88 S.Ct. 1889 (1967); *Brown v. Texas,* 443 U.S. 47, 52, 61 L.Ed.2d 357, 99 S.Ct. 2637 (1979).

There is no basis of knowledge set out in the affidavit suggesting facts or circumstances by the affiant or the informant that contraband or drugs are located at 310 East Second Street, Concordia, Kansas, the Petitioner's

residence, absent facts or underlying circumstances, how then is it possible to find that a search warrant was justifiably issued to search the Petitioner's residence herein. *Gates,* Id., 76 L.Ed.2d 527; *United States v. Kolodziej,* 712 F.2d 975, 977 (5th Cir. 1983); *State v. Morgan,* 222 Kan. 149, 154, 563 P.2d 1056 (1977).

The Petitioner's commentary that the Court of Appeals' application of "TOTALITY" is an attempt to resurrect the "RUBBER STAMP" is readly borne out in the Court's Opinion at Page 5, wherein the Court found "the conclusion of the affiant that a large stash of drugs would be found at the residence is not borne out by the affidavit since neither the informant nor the affiant actually saw drugs in the house and the information does not really indicate the kind of high-volume activity which accompanies a selling operation. Nevertheless, since drug use necessarily includes the possession of controlled substances, the probability that some contraband would be found on the premises was indicated by the affiant." The affiant never CONCLUDED that a large, small or any stash of drugs would be found at the residence. His conclusion, though ambiguous, is found at Page 7, Paragraph 4 of his affidavit.

"That heroin is stored in the home, is likewise inadequate, this is a mere conclusory statement that gives the magistrate virtually no basis at all for making a judgment regarding probable cause." How then is it possible to equate use with possession, when we do not find so much as a *CONCLUSION,* as the Court found to be adequate herein that the Petitioner was so much as a user. *Gates,* Id., 76 L.Ed.2d 549. Further, even use, absent corroboration, will not suffice to suggest possession. *State v. Finchpaugh,* 232 Kan. 831, 659 P.2d 208 (1983).

There exists, even in applying "TOTALITY", one conclusory statement in the affidavit, the statement then being ambiguous, that drugs may be located at 310 East Second, Concordia, Kansas, the Petitioner's residence, "which further leads your affiant to believe that illegal drug activity is still being sought out as it was reportedly disclosed by the 'CI' in this matter, with the current location being 310 East Second, Concordia, Kansas." The warrant's issuance was clearly absent probable cause and the evidence seized as a result thereof should both be suppressed and excluded.

If a reviewing Court cannot defer to a warrant that does not provide a substantial basis for determining the existence of probable cause, "its actions cannot be a mere ratification of the bare conclusions of others, it must perform his neutral and detached function", it is impossible to determine that the affidavit submitted herein allowed for a detached magistrate, manifesting his neutral and detached function, provided meaningful review. To allow for a determination that from the totality of circumstances viewed herein that the warrant issued on a proper analysis of the factual recitation found within the affidavit, becomes obvious to all who but review its contents. *United States v. Leon*, ... U.S. ....., 82 L.Ed.2d 677, 693, 694, 104 S.Ct. 3405 (1984). The magistrate clearly abandoned his judicial role and the affiant, officer, could not have possessed an objective reasonable belief in the existence of probable cause herein, "leads your affiant to believe." The Court adopted the affiant's reasoning herein, not the judicial function, as the Court "concluded", rather than found a "substantial basis existed herein." (Appendix B, pg. 5)

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the Judgment of the Kansas Supreme Court, along with the Judgment and Opinion of the Kansas Court of Appeals.

Respectfully submitted,

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APPENDIX

APPENDIX A

No. 84-57119-A

IN THE
SUPREME COURT OF THE STATE OF KANSAS

State of Kansas, Appellee,

v.

Anthony G. Bieker, Appellant.

You are hereby notified of the following action taken in the above entitled case:

PETITION FOR REVIEW.

DENIED. Mandate stayed until September 3, 1985.

Yours very truly,

Lewis C. Carter
Clerk, Supreme Court

Date July 2, 1985

APPENDIX B

NOT DESIGNATED FOR PUBLICATION

No. 57,119

IN THE
COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

ANTHONY G. BIEKER,
Appellant.

MEMORANDUM OPINION

Appeal from Cloud District Court; RICHARD W. WAHL, judge. Opinion filed May 9, 1985. Affirmed.

John C. Humpage, of Humpage, Berger and Hoffman, of Topeka, for the appellant.

Charley Laman, special assistant prosecutor, of Clyde, and *Robert T. Stephan,* attorney general, for the appellee.

Before ABBOTT, P.J., REES and PARKS, JJ.

Per Curiam: Defendant, Anthony G. Bieker, was convicted in a jury trial of three misdemeanor drug possession charges, possession of marijuana, possession of LSD and possession of drug paraphernalia. K.S.A. 1984 Supp. 65-4127b(a)(3), and 65-4152. He appeals from the orders denying his motion to suppress the evidence seized in a search authorized by a search warrant.

Defendant was arrested, charged and tried on the basis of evidence seized from his residence pursuant to a search warrant. He filed a motion to suppress this evidence which was denied at his preliminary hearing by the issuing magistrate and later by the district court judge

at trial. His motion for a new trial based on the same argument was also denied. The substance of defendant's argument is that the affidavit upon which the search warrant was issued was devoid of sufficient factual basis to support its issuance.

The current standards for reviewing the sufficiency of an affidavit are as follows:

> "A judge, in determining whether to issue a search warrant, should consider the 'totality of the circumstances' presented and make a practical, common-sense decision whether there is a fair probability that contraband or evidence of a crime will be found in that particular place."
>
> "Our scope of review of whether there was probable cause to issue a search warrant is to ensure that the judge who issued the warrant had a substantial basis for concluding that probable cause existed." *State v. Rose,* 8 Kan. App. 2d 659, Syl. ¶¶ 2 and 3, 665 P. 2d 1111, *rev. denied* 234 Kan. 1077 (1983).

With this scope of review and the totality of the circumstances test in mind, we turn now to examine what information the affiant provided the magistrate to justify the issuance of a search warrant.

The affiant stated that his information was supplied by his personal observation, the information of other law enforcement officers and a confidential informant. The information provided by the informant was that the Concordia area was being supplied with drugs by defendant through his brother who lives in Manhattan, Kansas. The informant provided the addresses of both brothers, which were confirmed by police investigation. The informant also stated that a stash of illegal substances which belonged to defendant and his cohorts was found in

a country farmhouse but destroyed by the finders. The informant did not specify who these finders were, how the informant knew they found drugs or why he believed the drugs destroyed belonged to defendant and his friends. The affiant appears to offer two pieces of information as direct support for the credibility of the informant. First, it appears that the affiant confronted one of the suspects with an allegation of drug activity and that the informant reported that as a consequence of this confrontation, the suspect destroyed the drugs he then possessed. This report of the suspect's reaction to his talk with affiant was subsequently confirmed by the suspect himself. The other information offered in support of the informant's reliability was the affiant's belief that the informant had no criminal background and was a law-abiding citizen of good moral character.

The information originating from the affiant or other police officers included the general suspicion that four suspects acting as a group and including defendant were involved in illegal drug activity. The affiant reported that defendant's house was observed and that out-of-county visitors and late-night activity were noted. The affiant reported that on the occasion of one of these periods of observation, a car belonging to a person previously convicted of a marijuana offense was parked outside defendant's residence and the shades and curtains of the house were all drawn with no activity being noted even though it was still daylight. The affiant also stated that one of the individuals believed to be acting in concert with the others was previously convicted of a drug possession offense and sentenced to a drug therapy program. He also stated that another individual who frequently visited defendant or lived with him was observed by the affiant to be exhibiting physical signs of drug use. Finally, the affiant made a conclusory statement that the farmhouse referred to by

the informant was no longer available to the group as a depository of drugs and so he believed drugs could be found on the premises at defendant's residence.

Keeping in mind the emphasis of *Rose* and *Illinois v. Gates*, 462 U.S. 213, 76 L.Ed.2d 527, 103 S.Ct. 2317 (1983), on the totality of the circumstances, the sworn statement of the affiant that the informant had no criminal background and was believed to be law-abiding and truthful and the narrow scope of review on appeal, the affidavit provided a substantial basis for the issuance of a search warrant. The totality of the information in the affidavit viewed from a very practical stance supports the conclusion that drugs were being used at the residence. The informant made this claim and his credibility was enhanced by the activity observed by the police. In addition, the actual statement of the informant concerning the reaction of the person questioned by affiant was directly confirmed by the person to the affiant. In sum, if isolated, the information in the affidavit is rather speculative and conclusory but taken as a whole, it presents a picture which, on review, satisfies the test of probable cause. The conclusion of the affiant that a large stash of drugs would be found at the residence is not borne out by the affidavit since neither the informant nor the affiant actually saw drugs in the house and the information does not really indicate the kind of high-volume activity which accompanies a selling operation. Nevertheless, since drug use necessarily includes the possession of controlled substances, the probability that some contraband would be found on the premises was indicated by the affiant.

We conclude that the magistrate and court had a substantial basis for determining that probable cause existed to issue the search warrant.

Affirmed.

APPENDIX C

AFFIDAVIT FOR SEARCH WARRANT

Your affiant deposes and states based upon my personal observations, consultation with other area law enforcement officers, and information supplied by a confidential and reliable informant, I submit the following to the court.

That I have information of reported illegal drug activity concerning a group of subjects to-wit James Bieker, Eddie Boyer, Anthony Bieker, and Kenneth Crump since the first part of February 1983. With this information that was supplied to Chief Rohr and your affiant, I confronted a subject associated with that group. This caused the subject to react and destroy his drugs and drug paraphernalia which he possessed at that time as he felt the police were getting to close to making an arrest. A subsequent interview with this subject revealed by his own admission to your affiant that he had in fact destroyed a marijuana bong and controlled substances he had which further confirmed the reliability of the information supplied by the informant in this matter. The confidential and reliable informant and later to be referred to as (CI) further informed Chief Rohr of drug related information about the subjects named in this affidavit, to-wit Kenneth Crump, Eddie Boyer, and Anthony Bieker with James Bieker as the source of drugs to Anthony and those stated above.

Since this time, the situation has been monitored by your affiant with additional information being received on 12 Nov 1983 from the (CI) stated above. The (CI) reported to your affiant that the Concordia area is being

supplied with drugs by James Bieker out of Manhattan, Kansas through his brother Anthony Bieker, who resides at 310 E. 2nd Street, Concordia, Kansas. The (CI) further reported to this affiant that recently a supply of their drugs were found in farmhouse between Belleville and Concordia which consisted of the following, marijuana, hashish LSD, cocaine and drug paraphernalia which was destroyed by the finders not knowing what to do, and prior to the (CI) informing your affiant. The (CI) further stated to this officer that the above named subjects feel they are always one step ahead of the cops!

Your affiant further states that with this recent information being supplied, I contacted the Riley County Police who confirmed that James Bieker does reside at Route # 5, Manhattan, Kansas as stated by the (CI). Further that Anthony Bieker does reside in Concordia, Kansas at 310 E. 2nd Street. Information supplied to your affiant by local lawenforcement officers further substantiates reported drug activity by the above mentioned group with their place of contact being 310 E. 2nd Street, Concordia, Kansas. Intelligence information supplied to your affiant by officers reveals out of county vehicles from Smith County, Kansas-Reno County, Kansas- and the State of Missouri, along with late night activity being recorded at 310 E. 2nd Street, Concordia, Kansas, which further leads your affiant to believe that illegal drug activity is still being sought out as it was reportedly disclosed by the (CI) in this matter, with the current location being 310 E. 2nd Street, Concordia, Kansas.

It is further the observation of your affiant, that on 23 Nov 1983 a subject known to your affiant as Tom Bieker and a frequent visitor and or tennant at 310 E. 2nd Street, was observed at the Thunderbird Lounge by Investigator

Bodine and myself. Biekers physical and facial appearance is comparable to the profile set forth by the Drug Enforcement Administration for the detection of drug abuse, to-wit ruddy and bloodshot eyes, along with rawness to the eye lids, leading your affiant to believe that Bieker had very recently come in contact with some type of body altering substance.

On 24 November 1983 your affiant witnessed vehicles normally associated with 310 E 2nd Street as being present along with a vehicle registered to one Robert Swanson of 1510 E. 26th Street, Hutchinson, Kansas. There was no movement visible in the dwelling as all the shades or curtains were drawn shut with it still being daylight hours. It is further reported to the court by your affiant that a background on Robert Swanson revealed a conviction for a controlled substance violation to-wit marijuana. On 24 Nov 1983 your affiant again returned to 310 E. 2nd Street to observe the occupants and people who frequent that dwelling. In doing so I found the dwelling with the lights on, the Swanson vehicle gone, with Anthony and Tom Biekers vehicle remaining.

Your affiant has received additional information from a reliable informant which disclosed to this officer that Eddie Boyer was recently arrested for possession of a controlled substance and as a result of that arrest was made to seek help for his drug addiction through a Chemical Dependency Unit. This Boyer recently completed and has been released from treatment. Further confirming drug involvement by the group named in this affidavit.

Your affiant states that the confidential and reliable informants stated in this affidavit have no criminal background and are believed to be law abiding citizens of good moral standing.

Your affiant concludes by stating that the farmhouse which was being utilized by the group for the storing of their drugs is no longer available to said subjects thereby making it conceivable to believe that a new location would be sought. It is further the contention of this affiant based upon the information received, the observations recorded by this officer and reports received from other area law enforcement officers that the new location for the group is 310 E. 2nd Street, Concordia, Kansas a residence under the control of one Anthony Bieker. It is therefore the request of the undersigned that a search warrant be issued for the items described herein, as provided by law.

Further your affiant saith not.

/s/ Howard S. Budreau
Affiant-Applicant

/s/ Marvin L. Stortz
Judge

25 November 1983